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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 KEVIN HAROLD CLEAVER,  
12 Plaintiff,

13 v.

14 CAROLYN W. COLVIN,  
15 Acting Commissioner of the  
16 Social Security Administration,  
17 Defendant.  
18

Case No. EDCV 14-0829 SS

MEMORANDUM DECISION AND ORDER

19 I.

20 INTRODUCTION  
21

22 Kevin Cleaver ("Plaintiff") seeks review of the final  
23 decision of the Commissioner of the Social Security  
24 Administration (the "Commissioner" or the "Agency") denying his  
25 application for Disability Insurance Benefits and Supplemental  
26 Security Income. The parties consented, pursuant to 28 U.S.C. §  
27 636(c), to the jurisdiction of the undersigned United States  
28 \\

1 Magistrate Judge. For the reasons stated below, the decision of  
2 the Commissioner is AFFIRMED.

3  
4 **II.**

5 **PROCEDURAL HISTORY**

6  
7 Plaintiff applied for Title II Disability Insurance Benefits  
8 ("DIB") and Title XVI Supplemental Security Income ("SSI") on May  
9 23, 2008. (Administrative Record ("AR") 250-258). Plaintiff  
10 alleged a disability onset date of March 20, 2008. (AR 252).  
11 The Agency denied Plaintiff's application on September 18, 2008,  
12 and upon reconsideration on November 12, 2008. (AR 136, 141).  
13 On November 20, 2008, Plaintiff requested a hearing before an  
14 Administrative Law Judge ("ALJ"). (AR 147). ALJ Keith Dietterle  
15 ("ALJ Dietterle") conducted the hearing on July 22, 2010. (AR  
16 105). On December 22, 2010, the ALJ Dietterle determined that  
17 Plaintiff was disabled for the closed period of March 20, 2008,  
18 through July 31, 2009. (AR 105). However, the ALJ Dietterle  
19 concluded that after August 1, 2009, Plaintiff retained the  
20 residual functional capacity (RFC) to perform a full range of  
21 sedentary work. (AR 111).

22  
23 Plaintiff filed a timely request for review of the ALJ  
24 Dietterle's decision on February 24, 2011.<sup>1</sup> (AR 188). On May  
25 22, 2012, the Appeals Council (the "Council") affirmed the ALJ  
26

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27 <sup>1</sup> While this appeal was pending, Plaintiff filed new DIB and SSI  
28 applications, this time alleging a disability onset date of May  
16, 2011. (AR 271, 279).

1 Dietterle's finding of disability within the closed period. (AR  
2 122-23). However, the Council vacated the ALJ's decision as it  
3 pertained to Plaintiff's alleged disability after August 1, 2009,  
4 and remanded the matter for further proceedings. (Id.). The  
5 Council noted that the ALJ did not provide an analysis of  
6 Plaintiff's transferable skills, as required by Medical-  
7 Vocational grid rule 201.11. (AR 122). Therefore, the Appeals  
8 Council directed the ALJ to obtain evidence from a Vocational  
9 Expert ("VE") to show whether Plaintiff retained skills  
10 transferable to sedentary work. (Id.).  
11

12 ALJ Lynn Ginsberg (the "ALJ") conducted a hearing following  
13 the Appeals Council remand on October 30, 2012 (the "ALJ Hearing"  
14 or "ALJ Ginsberg"). (AR 44-97). On November 30, 2012, the ALJ  
15 issued a decision denying DIB and SSI.<sup>2</sup> (AR 19-35). On January  
16 23, 2014, the Council denied Plaintiff's request for review. (AR  
17 4-6). On May 8, 2014, Plaintiff filed the instant action. (Dkt.  
18 No. 3).  
19

### 20 III.

#### 21 FACTUAL BACKGROUND

22

23 Plaintiff was born on August 8, 1960. (AR 252). He was  
24 forty-seven years old as of his initial disability onset date and  
25 fifty-two years old at the time of the ALJ Hearing. (AR 44,  
26

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27 <sup>2</sup> The ALJ specifically associated Plaintiff's May 16, 2011,  
28 claims with the claim on remand and rendered a decision on all of  
the claims. (AR 22).

1 252). Plaintiff has a high school equivalency diploma (AR 122)  
2 and can communicate in English. (AR 33). Plaintiff worked as a  
3 heavy duty truck mechanic from 1980 until March 20, 2008. (AR  
4 300). From April 22, 2010, until May 16, 2011, Plaintiff worked  
5 as an automotive test driver. (AR 357). Plaintiff first sought  
6 treatment for back pain in 2003. (AR 301).

7  
8 **A. Medical History And Physicians' Opinions**

9  
10 **1. Na'Imah Powell, M.D.**

11  
12 Na'Imah Powell, M.D., began treating Plaintiff in November  
13 of 2007. (AR 301-02). Dr. Powell diagnosed Plaintiff as  
14 morbidly obese<sup>3</sup> and with chronic back pain. (AR 464-65).  
15 Plaintiff's medications included Vicodin, Soma, and Aleve.<sup>4</sup> (AR  
16 465). On March 24, 2008, an x-ray revealed a possible left  
17 femoral neck fracture. (AR 477). However, due to Plaintiff's  
18 weight, Dr. Powell's conjecture could not be confirmed by an MRI.  
19 (AR 469). On April 27, 2008, a CT scan ordered by Dr. Powell  
20 revealed no abnormalities of the left hip or pelvis. (AR 467).

21  
22 On April 1, 2009, Plaintiff underwent laparoscopic gastric  
23 bypass surgery in order to lose weight. (AR 632). By November  
24 16, 2009, Plaintiff had lost more than 150 pounds. (AR 649).

25 <sup>3</sup> On January 22, 2008, Plaintiff weighed "over 400" pounds. (AR  
26 465).

27 <sup>4</sup> Vicodin is a brand name for hydrocodone, an opiate. Soma is a  
28 muscle relaxant. Aleve is a non-prescription analgesic. See,  
MedlinePlus, <http://www.nlm.nih.gov/medlineplus/druginformation>  
and enter medication name (last visited March 19, 2015).

1 Plaintiff still complained of lower back pain that "moderately  
2 limit[ed]" his activities. (Id.). However, by January 18, 2010,  
3 Dr. Powell was able to temporarily discontinue narcotics. (AR  
4 653). On April 8, 2010, Dr. Powell noted Plaintiff was "[d]oing  
5 well. He is going back to work." (AR 656).

6  
7 On March 24, 2012, Plaintiff went to the emergency room of  
8 Riverside County Regional Medical Center in order to get his pain  
9 medications refilled and to be referred to a spine clinic. (AR  
10 680). The physician on duty prescribed Vicodin and issued the  
11 referral. (AR 681).

12  
13 **2. Bryan H. To, M.D.**  
14

15 Consultative physician Bryan H. To, M.D., conducted an  
16 internal medicine examination of Plaintiff on August 17, 2012.  
17 (AR 747). Plaintiff weighed 270 pounds at the time of this  
18 examination. (AR 748). Although Plaintiff reported back pain,  
19 Dr. To found Plaintiff able to raise his legs normally from a  
20 supine or sitting position. (AR 751). Dr. To noted some  
21 decreased range of motion, but palpation along the spine did not  
22 cause Plaintiff pain or spasm. (AR 750). Dr. To judged  
23 Plaintiff capable of "frequent" bending, kneeling, stooping,  
24 crawling and crouching. (AR 751). He opined that Plaintiff  
25 could push, pull, lift or carry twenty pounds occasionally and  
26 ten pounds frequently. (Id.).

27 \\  
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1     **B. Vocational Expert Testimony**

2  
3           Vocational Expert Malcolm Brodzinsky testified regarding the  
4 existence of jobs in the national economy that Plaintiff could  
5 perform given his physical limitations. (AR 71-94). The VE  
6 first described Plaintiff's past relevant work. (AR 73-74). The  
7 VE opined that Plaintiff's past jobs as a supervisory truck  
8 mechanic and an automotive test driver qualified as "heavy"  
9 work.<sup>5</sup> (Id.).

10  
11           The ALJ then posed several hypotheticals to the VE. The ALJ  
12 asked if a hypothetical individual with Plaintiff's background  
13 and residual functional capacity could perform Plaintiff's past  
14 work. (AR 77-78). The VE opined that the individual could not  
15 perform any of Plaintiff's past work, and had no transferable  
16 skills. (AR 78). However, the individual could perform "the  
17 full range of unskilled light work," totaling more than 1,500  
18 occupations. (Id.). The ALJ then adjusted the hypothetical in  
19 several ways. (AR 79-84). In all of these cases, the VE again  
20 opined that Plaintiff would find significant numbers of positions  
21 available. (Id.).

22     \\

23     \\

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24     <sup>5</sup> "Heavy work involves lifting no more than 100 pounds at a time  
25 with frequent lifting or carrying of objects weighing up to 50  
26 pounds. If someone can do heavy work, we determine that he or she  
27 can also do medium, light, and sedentary work." 20 C.F.R. §§  
28 404.1567 and 416.967. The VE noted that, although Plaintiff  
performed his work as a test driver at the "heavy" level,  
Plaintiff did not receive enough training to perform this job as  
it is performed in the national economy. (AR 77).

1 **C. Plaintiff's Testimony**

2  
3 **1. Testimony Before The ALJ**

4  
5 Plaintiff testified that, although he lived by himself, he  
6 frequently visited his girlfriend for about a week at a time.  
7 (AR 55-56). Plaintiff drove forty minutes for these visits. (AR  
8 56). Plaintiff and his girlfriend watched television and movies  
9 and played with her four dogs, each of which weighed about fifty  
10 pounds. (AR 59).

11  
12 Plaintiff's nephew assisted Plaintiff with household  
13 cleaning. (AR 57). Plaintiff could prepare frozen foods on his  
14 own. (AR 58). Plaintiff was able to launder and change his own  
15 sheets, but had to rest while doing so. (AR 57). He could stand  
16 for five to ten minutes and walk up to three or four blocks  
17 before needing to sit. (AR 58). Plaintiff did his own grocery  
18 shopping, accompanied by his girlfriend or nephew. (AR 63). He  
19 used a computer at home and at his girlfriend's house. (AR 59-  
20 60). However, he could no longer participate in his former  
21 hobbies, including working on old cars. (Id.). Plaintiff also  
22 testified that he could no longer do any mechanical work. (Id.).  
23

24 In January 2012, Plaintiff flew to Utah following his  
25 sister's death. (AR 60). Plaintiff brought a carry-on bag  
26 weighing twenty to twenty-five pounds on the trip. (AR 61).  
27 Plaintiff was not sure of a maximum weight he could lift, but was  
28 sure that he could lift a twelve-pack of soda. (Id.).

1 Plaintiff described his work as an automotive test driver,  
2 which began on April 22, 2010 and continued for more than a year.  
3 (AR 50). This work involved accelerating automobiles to 100  
4 miles per hour on an oval test track, breaking to zero, and  
5 accelerating again repeatedly. (AR 51). Drivers also tested  
6 cars in rough terrain. (Id.). Drivers worked all night and had  
7 to lift "water dummies" weighing forty or fifty pounds in and out  
8 of cars. (Id.). Plaintiff testified that he had to miss work  
9 three times due to back pain, and one absence lasted for two  
10 months. (AR 50-52). He finally quit after judging his pain too  
11 severe to continue. (AR 51).

12  
13 Plaintiff testified that he weighed 272 pounds at the time  
14 of the ALJ Hearing. (AR 53). He was receiving treatment at a  
15 spine clinic and expected to receive an epidural injection that  
16 week. (Id.). Plaintiff regularly experienced numbness in his  
17 legs, hands and fingers. (AR 66). Plaintiff sometimes used a  
18 cane, but it had not been prescribed. (AR 54-55). Plaintiff  
19 explained that he had visited a chiropractor in the past, but  
20 could no longer afford to do so. (AR 65). Plaintiff took  
21 several prescription pain medications daily. (AR 54). Plaintiff  
22 avoided driving while taking these medications, which made him  
23 feel "high." (AR 69).

## 24 25 **2. Statements From Plaintiff's 2011 Function Report**

26  
27 On September 17, 2011, Plaintiff completed an Agency  
28 function report in which he described his daily activities. (AR



1 373-380). Plaintiff wrote that after waking up, he ate  
2 breakfast, rested, and took his medication. (AR 373). Plaintiff  
3 explained that he did "little chores" in the afternoon, and then  
4 rested before spending time sitting outside. (Id.). Plaintiff  
5 tried to perform as many chores as possible before his back  
6 became too painful. Plaintiff stated that he took his  
7 medications two to three times per day. (Id.).  
8

9 Plaintiff noted that he cared for two small dogs, which he  
10 fed and took outside unless he was sore, in which case his nephew  
11 helped. (AR 374). Plaintiff could not stand long enough to cook  
12 complicated meals but was able to make frozen dinners and  
13 sandwiches. (AR 375). He could dust, wipe counters and sweep  
14 his house, spending twenty-five to thirty minutes on each task.  
15 (Id.). He could do laundry but could not do household repairs or  
16 yard work. (AR 375-76). Plaintiff could shop for groceries and  
17 household supplies. (AR 376). Plaintiff could walk one to two  
18 blocks before needing to rest for five to ten minutes. (AR 378).  
19

#### 20 IV.

#### 21 THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

22

23 To qualify for disability benefits, "a claimant must  
24 demonstrate a medically determinable physical or mental  
25 impairment that prevents her from engaging in substantial gainful  
26 activity and that is expected to result in death or to last for a  
27 continuous period of at least twelve months." Reddick v. Chater,  
28 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C.

1 § 423(d)(1)(A)). The impairment must render the claimant  
2 "incapable of performing the work she previously performed and  
3 incapable of performing any other substantial gainful employment  
4 that exists in the national economy." Tackett v. Apfel, 180 F.3d  
5 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

6  
7 To determine whether a claimant is entitled to benefits, an  
8 ALJ conducts a five-step inquiry. 20 C.F.R. §§ 404.1520,  
9 416.920. The steps and their related inquiries are as follows:

10  
11 (1) Is the claimant presently engaged in substantial  
12 gainful activity? If so, the claimant is found  
13 not disabled. If not, proceed to step two.

14 (2) Is the claimant's impairment severe? If not, the  
15 claimant is found not disabled. If so, proceed  
16 to step three.

17 (3) Does the claimant's impairment meet or equal one  
18 of the specific impairments described in 20  
19 C.F.R. Part 404, Subpart P, Appendix 1? If so,  
20 the claimant is found disabled. If not, proceed  
21 to step four.

22 (4) Is the claimant capable of performing his past  
23 work? If so, the claimant is found not disabled.  
24 If not, proceed to step five.

25 (5) Is the claimant able to do any other work? If  
26 not, the claimant is found disabled. If so, the  
27 claimant is found not disabled.  
28

1 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
2 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20  
3 C.F.R. §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

4  
5 The claimant has the burden of proof at steps one through  
6 four and the Commissioner has the burden of proof at step five.  
7 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an  
8 affirmative duty to assist the claimant in developing the record  
9 at every step of the inquiry. Id. at 954. If, at step four, the  
10 claimant meets his burden of establishing an inability to perform  
11 past work, the Commissioner must show that the claimant can  
12 perform some other work that exists in "significant numbers" in  
13 the national economy, taking into account the claimant's residual  
14 functional capacity, age, education, and work experience.  
15 Tackett, 180 F.3d at 1099, 1100; Reddick, 157 F.3d at 721; 20  
16 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do  
17 so by the testimony of a vocational expert or by reference to the  
18 Medical-Vocational Guidelines appearing in 20 C.F.R. Part 404,  
19 Subpart P, Appendix 2 (commonly known as "the Grids"). Osenbrock  
20 v. Apfel, 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant  
21 has both exertional (strength-related) and non-exertional  
22 limitations, the Grids are inapplicable and the ALJ must take the  
23 testimony of a vocational expert. Moore v. Apfel, 216 F.3d 864,  
24 869 (9th Cir. 2000) (citing Burkhart v. Bowen, 856 F.2d 1335,  
25 1340 (9th Cir. 1988)).

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## V.

## THE ALJ'S DECISION

The ALJ employed the five-step sequential evaluation process and concluded that Plaintiff was not under a disability within the meaning of the Social Security Act after August 1, 2009. (AR 22). At step one, the ALJ found that Plaintiff had not engaged in substantial gainful employment since August 1, 2009.<sup>6</sup> (AR 25). At step two, the ALJ found that Plaintiff had the severe impairments of obesity, post status gastric bypass in April 2009, umbilical hernia, lumbar spine osteoarthritis, chronic back pain and high blood pressure. (Id.). However, at step three, the ALJ found that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1525, 404.1526, 416.925, 416.926).<sup>7</sup> (Id.). The ALJ noted that "no treating or examining physician recorded findings equivalent in severity to the criteria of any listed impairment." (Id.). The ALJ then found that Plaintiff had the following RFC:

[Plaintiff] has had the residual functional capacity to perform light work as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b) except he can do frequent postural activities such as climbing ladders, ropes,

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<sup>6</sup> The ALJ opined that Plaintiff's work as a test driver during the alleged disability period qualified as an unsuccessful work attempt, and not as "substantial gainful activity." (AR 25).

<sup>7</sup> A physical or mental impairment is considered "severe" if it "significantly limits [the claimant's] physical or mental ability to do basic work activities." 20 C.F.R. § 404.1520

1 and scaffolds, climbing ramps, balancing, stooping,  
2 kneeling, crouching, and crawling; he can do frequent  
3 agility tasks such as walking on uneven terrain and  
4 working at heights; and he can have no to rare exposure  
5 to heavy moving machinery.

6  
7 (AR 26). The ALJ noted that she had considered all of  
8 Plaintiff's symptoms and the extent to which they could  
9 reasonably be accepted as consistent with the objective medical  
10 evidence and other evidence, pursuant to 20 C.F.R. § 404.1529 and  
11 SSRs 96-4p and 96-7p. (Id.). The ALJ also considered opinion  
12 evidence as required by 20 C.F.R. § 404.1527 and SSRs 96-2p, 96-  
13 5p, 96-6p and 06-3p. (Id.).

14  
15 The ALJ found that the claimant's subjective allegations  
16 were "less than fully credible." (AR 32). In making this  
17 finding, the ALJ gave great weight to Plaintiff's description of  
18 his daily activities, and found that Plaintiff's "assertions  
19 [regarding his symptoms] are in excess of the medical and other  
20 evidence of record." (Id.). The ALJ noted Plaintiff's statement  
21 that he could drive forty minutes to his girlfriend's house. (AR  
22 28). Plaintiff was also able to fly to Utah with a twenty-pound  
23 carry-on bag. (Id.). The ALJ opined that Plaintiff's ability to  
24 do "heavy" work as a test driver for several months, though  
25 ultimately unsuccessful, also called the severity of his symptoms  
26 into question. (Id.). Finally, the ALJ reasoned that  
27 Plaintiff's conservative treatment suggested that his symptoms  
28 and limitations were not as severe as alleged. (AR 27). This

1 treatment plan, including pain medications, muscle relaxants,  
2 blood pressure medication and chiropractic treatment, had been  
3 "relatively successful" in relieving Plaintiff's symptoms. (AR  
4 28).

5  
6 At step four, the ALJ determined that Plaintiff was unable  
7 to perform any of his past relevant work as defined by 20 C.F.R.  
8 §§ 404.1565, 416.965. (AR 32). However, based on the vocational  
9 expert's testimony, and considering Plaintiff's age, education,  
10 work experience and RFC, Plaintiff could perform jobs that  
11 existed in significant numbers in the national economy. (AR 33-  
12 34). Therefore, the ALJ concluded that Plaintiff had not been  
13 disabled since August 1, 2009. (AR 34).

## 14 15 VI.

### 16 STANDARD OF REVIEW

17  
18 Under 42 U.S.C. § 405(g), a district court may review the  
19 Commissioner's decision to deny benefits. "The court may set  
20 aside the Commissioner's decision when the ALJ's findings are  
21 based on legal error or are not supported by substantial evidence  
22 in the record as a whole." Aukland v. Massanari, 257 F.3d 1033,  
23 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097); Smolen  
24 v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1996) (citing Fair v.  
25 Bowen, 885 F.2d 597, 601 (9th Cir. 1989)).

26  
27 "Substantial evidence is more than a scintilla, but less  
28 than a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson

1 v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant  
2 evidence which a reasonable person might accept as adequate to  
3 support a conclusion." Id. To determine whether substantial  
4 evidence supports a finding, the court must "'consider the record  
5 as a whole, weighing both evidence that supports and evidence  
6 that detracts from the [Commissioner's] conclusion.'" Aukland,  
7 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th  
8 Cir. 1993)). If the evidence can reasonably support either  
9 affirming or reversing that conclusion, the court may not  
10 substitute its judgment for that of the Commissioner. Reddick,  
11 157 F.3d at 720-21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457  
12 (9th Cir. 1995)).

## 13 14 VII.

### 15 DISCUSSION

16  
17 Plaintiff contends that the ALJ failed to properly evaluate  
18 Plaintiff's subjective complaints and assess his credibility.  
19 (Memorandum in Support of Plaintiff's Complaint ("MSPC") at 4).  
20 According to Plaintiff, the ALJ also erred by failing to  
21 articulate sufficient reasons for rejecting Plaintiff's  
22 subjective testimony. (MSPC at 6). The Court disagrees. The  
23 ALJ's decision contains an extensive discussion of clear and  
24 convincing reasons for rejecting Plaintiff's subjective  
25 testimony, supported by substantial evidence.

26  
27 When assessing a claimant's credibility, the ALJ must engage  
28 in a two-step analysis. Molina v. Astrue, 674 F.3d 1104, 1112

1 (9th Cir. 2012). Initially, the ALJ must determine if there is  
2 medical evidence of an impairment that could reasonably produce  
3 the symptoms alleged. (Id.). If such evidence exists, the ALJ  
4 must make specific credibility findings in order to reject the  
5 claimant's testimony. (Id.). The ALJ may use "ordinary  
6 techniques of credibility evaluation" during this inquiry.  
7 Smolen, 80 F.3d at 1284. The ALJ may also consider any  
8 inconsistencies in the claimant's conduct and any inadequately  
9 explained or unexplained failure to pursue or follow treatment.  
10 Tommasetti v. Astrue, 533 F.3d 1035, 1039 (9th Cir. 2008).  
11 Additionally, the ALJ may use evidence of the claimant's ability  
12 to perform daily activities that are transferrable to the  
13 workplace to discredit his testimony about an inability to work.  
14 Morgan v. Commissioner of the Social Security Administration, 169  
15 F.3d 595, 600 (9th Cir. 1999). To determine whether the record  
16 presents "substantial evidence" to support or reject the  
17 Commissioner's findings, the court considers "the record as a  
18 whole." Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2  
19 F.3d 953, 956 (9th Cir. 1993)).

20  
21 Plaintiff did present medical evidence of impairment.  
22 However, the ALJ articulated specific, clear and convincing  
23 reasons for discounting Plaintiff's testimony about the severity  
24 of his symptoms. The ALJ cited Plaintiff's daily activities as a  
25 reason that his testimony was unreliable. The ALJ noted that  
26 Plaintiff was able to walk two to three blocks before requiring a  
27 break, to watch television, use a computer, lift a twelve pack of  
28 soda, bathe himself and go food shopping. (AR 27). Plaintiff



1 was able to drive forty minutes to his girlfriend's house. (AR  
2 28). Finally, the ALJ opined that Plaintiff's ability to fly to  
3 Utah with carry-on luggage indicated that Plaintiff's symptoms  
4 were not as severe as he alleged. (AR 28).

5  
6 The Court finds that Plaintiff's daily activities undermine  
7 his testimony regarding disabling pain and fatigue. On his  
8 function report, Plaintiff stated that he performs such chores as  
9 going to the post office, grocery shopping, and visiting doctors'  
10 offices, showing his independence. (AR 373). Plaintiff also  
11 stated that he performed some household chores, such as dusting,  
12 wiping counters and sweeping. (AR 375). Plaintiff described  
13 driving a car and visiting with friends and family a "couple of  
14 times a week." (AR 377).

15  
16 The ALJ properly relied upon evidence of Plaintiff's daily  
17 activities in evaluating whether his subjective testimony was  
18 credible. See, e.g., Smolen, 80 F.3d at 1284 (ALJ may consider  
19 claimant's daily activities in evaluating testimony as to  
20 severity of symptoms); Morgan, 169 F.3d at 600 (ALJ may discount  
21 claimant's testimony where his normal activities can transfer to  
22 the work setting); Fair, 885 F.2d at 603 (daily activities may be  
23 reason to discredit excess pain allegation where claimant spends  
24 substantial part of the day performing activities that may  
25 transfer to a work setting).

26  
27 Furthermore, the records cited by the ALJ indicate that  
28 Plaintiff's medication and treatment have been relatively

1 successful in managing his symptoms. (AR 29). In February 2009,  
2 Dr. Powell indicated that Plaintiff's pain was related to his  
3 morbid obesity. (AR 600). However, on April 1, 2009, Plaintiff  
4 underwent gastric bypass surgery. After his surgery, Plaintiff  
5 began to exercise and lose extensive weight. (AR 615-635). By  
6 November 2009, Plaintiff had lost 150 pounds, and Plaintiff's  
7 physicians told him to return to a regular diet. (AR 649-650).  
8 Although Plaintiff continued to complain of back pain, the pain  
9 only moderately limited his activities. (AR 649). On January  
10 18, 2010, Plaintiff was no longer taking narcotic pain  
11 medications. (AR 653). On April 8, 2010, Plaintiff's physician  
12 noted that he was doing well and going back to work. (AR 656).

13  
14 Although Plaintiff gained back thirty pounds by March 2011,  
15 his total weight loss was still about one hundred pounds. (AR  
16 660). On May 5, 2011, Plaintiff went to the emergency room  
17 complaining of increasing back pain and was given Flexeril,  
18 naproxen, and Vicodin for his pain. (AR 688-694). However,  
19 Plaintiff never saw a specialist for his pain and instead  
20 continued seeing his general practitioner. The record supports  
21 the ALJ's conclusion that Plaintiff's treatment was conservative  
22 in nature and relatively effective in treating his symptoms.  
23 After reviewing the ALJ's decision and based on the foregoing,  
24 the Court finds that the ALJ provided sufficiently clear and  
25 convincing reasons, supported by substantial evidence, for  
26 discounting Plaintiff's subjective statements.

VIII.

CONCLUSION

Consistent with the foregoing, IT IS ORDERED that Judgment be entered AFFIRMING the decision of the Commissioner. The Clerk of the Court shall serve copies of this Order and the Judgment on counsel for both parties.

DATED: March 23, 2015

/S/

SUZANNE H. SEGAL  
UNITED STATES MAGISTRATE JUDGE